

1 me to show you where you --

2 A. Well, in paragraph one Raystay is
3 mentioned.

4 Q. Raystay was a word that you were
5 familiar enough to use in your affidavit, is that
6 correct?

7 A. I was familiar enough to know that they
8 were the ones involved in this case. As far as --

9 Q. And who told you that?

10 A. Mr. Holt.

11 Q. So that's the first time you knew that;
12 is that it?

13 A. I would say so. Yes, sir.

14 Q. Did Mr. Daly tell you he was
15 representing Raystay?

16 A. No, sir.

17 Q. So you, obviously, have no recollection
18 that these persons told you they were representing
19 Raystay?

20 A. No, sir.

21 Q. Did you believe they were representing
22 the -- Strike that.

23 MR. EMMONS: Mr. Cohen, I have a
24 suggestion. You better orient the witness on the
25 time frame because you had talked about Mr. Daly a

1 moment ago.

2 MR. COHEN: Thank you. I think that's
3 especially helpful. I appreciate your help.

4 BY MR. COHEN:

5 Q. My friend, Mr. Emmons, points out that
6 I am switching years, and Mr. Daly saw you in 1989.

7 A. Yes, sir.

8 Q. Did Mr. Daly tell you he was
9 representing an entity named Raystay?

10 A. No, sir.

11 Q. You don't recall, or he told you he
12 didn't?

13 A. To the best of my recollection he did
14 not say who he was representing.

15 Q. And you never asked him?

16 A. I don't think so, sir. I don't believe
17 so, sir.

18 Q. And since you didn't know it was an
19 entity named Raystay in 1991, in October when you
20 had the visit from these two gentlemen, you have no
21 recollection that they mentioned the word, Raystay?

22 A. No, sir.

23 Q. So you have no reason to believe that
24 they were representing an entity that you didn't
25 know anything about, is that correct?

1 Strike that. That question is not a
2 proper question.

3 Now, turning to paragraph four of your
4 affidavit and trying to help your recollection, you
5 state one of the visitors said that he was the new
6 owner of the rights?

7 A. That's correct.

8 Q. But you don't know -- Let me ask you
9 this question. Are you certain that neither person
10 identified who was the new owner of the rights?

11 A. To the best of my recollection, I do
12 not -- I don't know if they did or they didn't,
13 sir. If they did, I don't remember who they said.

14 Q. And do you recall asking?

15 A. No, sir. I don't think I did.

16 Q. And the reason you didn't ask was you
17 didn't get that far; is that it? In your
18 conversation?

19 A. That's, basically, about it because, as
20 I had stated there, I had not given anybody any
21 rights.

22 So it was kind of a -- This whole thing
23 was a kind of a shock to me that they -- In all
24 honesty, they didn't present the case that it was
25 automatic, cut and dried, that they were placing a

1 television antenna on it.

2 Something was open for discussion, and
3 this thing came to the dust situation, and that was
4 it.

5 Q. Was it your sense that they wanted to
6 talk to you about working something out with you?

7 A. They came in as the new, quote, owner
8 of the rights.

9 We sat down, and they started
10 discussing the television antenna that someone had
11 been there before about.

12 And it got into the conversation of the
13 dust-free area. It was obvious that they wanted to
14 put something on top of the plant.

15 Q. Or else why would they have come to see
16 you?

17 A. Exactly.

18 Q. So what was your understanding then of
19 the purpose of their visit?

20 A. To talk to me about it.

21 Q. To see if the site was suitable?

22 A. The only thing that was mentioned as
23 far as suitability of the site was dust, and once
24 the dust was discussed, that was the end of the
25 conversation.

1 Q. Okay. Now, I want to ask you about
2 paragraph four of your affidavit, and you see in
3 the fourth line from the bottom, it says: To the
4 best of my recollection, I simply assume that he
5 had received permission to build the facilities.
6 Do you see that?

7 A. Yes, sir.

8 Q. Why did you state this: To the best of
9 my recollection?

10 A. Well, there was no other discussion. I
11 had no idea what rights are, and I am assuming that
12 this gentleman who had been in there in 1989 was
13 looking for a place.

14 And, if I recall exactly, he was
15 stating that: I am just looking. It doesn't mean
16 anything is being built here. I'm just looking for
17 sites which will be submitted. And that was that.

18 Q. But why did you use the words, to the
19 best of my recollection, there?

20 A. I don't know, sir.

21 Q. Are those your words or Mr. Holt's
22 words?

23 A. I don't know the answer to that either,
24 sir. I don't.

25 Q. So they could have been Mr. Holt's

1 words?

2 A. They could have been.

3 Q. And it could have been your words?

4 A. That's correct, sir. I don't recall.

5 Q. But you don't know whose words they

6 were?

7 A. I don't recall on that.

8 Q. Do you see the words: You assumed?

9 You simply assumed that they had received

10 permission to build the facilities, and that they

11 were now looking to secure a suitable site?

12 A. That's the way I figured it.

13 Q. What do you mean when you used the

14 word: Assumed?

15 A. This is going back to Mr. Daly that

16 there were going to be sites submitted, and that

17 was about it.

18 You know, the guy comes in. He's going

19 to submit your site to see if it was approved,

20 wants to be.

21 And then some guy comes back two years

22 later, says he's the new owner of the rights.

23 So I'm assuming they are going a step

24 further. What a step further is in this sequence,

25 I really don't know.

1 Now they, I take it, in the sentence to
2 the best of my recollection, they refer to the new
3 owners?

4 A. That's correct.

5 Q. And you never asked them who they
6 represented, is that right?

7 A. No, sir. As far as I can remember, no.

8 Q. Which visitor told you that they would
9 require a dust-free area?

10 A. I -- And, boy, this is -- I think it
11 was the gentleman sitting on the left.

12 Q. Do you recall, was one gentleman taller
13 than the other? Were they the same size? Does one
14 have different color hair? Did they have any
15 distinguishing features?

16 A. Okay, the only thing I can come up
17 with, I would say they were basically the same size
18 in height and possibly in weight.

19 It sticks in my mind that one gentleman
20 was lighter of hair, grayer. I don't recall
21 exactly which.

22 Q. If you saw those two gentlemen now, if
23 they walked in this room, could you recognize them?

24 A. Absolutely not, sir.

25 Q. You couldn't recognize them?

1 A. No, sir. This room right now, under
2 these circumstances I might guess. But absolutely
3 recognize them, no, sir.

4 Q. Absolutely recognize them?

5 A. No, sir.

6 Q. What about be reasonably sure of who
7 they are?

8 A. No, sir.

9 Q. So seeing these persons again would not
10 refresh your recollection?

11 A. I don't think so, sir.

12 Q. Now, the words dust-free area, are
13 those three words you recall one of those two
14 persons using, or is this your characterization?

15 A. No, those are the words they used.

16 Q. Those are their words?

17 A. Yes, sir. They even went on further to
18 be a dry area.

19 Q. Did both of these persons join in this
20 conversation? Was this a three-way conversation,
21 or was this a two-way conversation where one person
22 was auditing, and the other person was talking, and
23 you were talking?

24 A. All three were talking.

25 Q. Did you get the sense that one was

1 senior to the other? I don't mean senior in age.
2 I mean senior in terms of responsibility.

3 A. I know what you mean. I don't know,
4 sir. Not really.

5 Q. Did you get the sense that one was the
6 boss, and the other one was junior to him?

7 A. Well, usually when two people come into
8 your office, the one that starts talking is the
9 boss, and the gentleman on the left started
-10 talking.

11 Q. Did he do most of the talking?

12 A. No. It was probably fifty/fifty.

13 Q. And which visitor told you the site
14 would not be suitable?

15 A. I don't recall which one, sir.

16 Q. I want you to look at paragraph six.
17 And I have reference to the top of the page, the
18 sentence beginning: Indeed. Why don't you just
19 read that to yourself?

20 A. Paragraph six?

21 Q. Yes. Read it to yourself. Then I have
22 a question. Read the first sentence on page five.

23 A. I'm sorry, sir, page five or paragraph
24 six?

25 Q. Page five, paragraph six.

1 A. Yes, sir.

2 Q. Now, the way I read this, and you tell
3 me if I am wrong: I read this to say that you are
4 saying that you considered the October, 1991 visit
5 to be one by a Raystay representative. Is that the
6 way you read what you said?

7 MR. EMMONS: I'm sorry, I lost you, Mr.
8 Cohen. What language?

9 MR. COHEN: I'm talking about the first
10 sentence on page five: Indeed.

11 MR. SHOOK: It's not the first sentence
12 of paragraph six. It's in the middle of the
13 paragraph six.

14 THE WITNESS: It's actually the end of
15 paragraph six, which is on page five, the top of
16 page five.

17 MR. EMMONS: I see. Thank you.

18 THE WITNESS: This was in response to a
19 question which was asked by Mr. Holt whether it was
20 possible if anybody from -- and he probably used
21 the term, Raystay, so that's why it's in, had
22 contacted Ready Mixed at any other time.

23 In other words, he was questioning
24 whether any of the other two owners' families or
25 principals had been contacted.

1 And I said: To my knowledge they have
2 not. I then contacted them, and they had not.

3 BY MR. COHEN:

4 Q. Well, am I correct that you considered
5 the October, 1991 visit to be one by a Raystay
6 representative?

7 A. That is not correct.

8 Q. It's not correct?

9 A. No, sir.

10 Q. I see. And that's not the way you read
11 that sentence, is that correct?

12 A. The way I interpret that is that apart
13 from Mr. Daly's visit and the October, '91 visit,
14 then after that no representative of Raystay has
15 ever contacted me.

16 Q. You didn't know who Raystay was until
17 Mr. Holt told you about Raystay, right?

18 A. Correct.

19 Q. And what did Mr. Holt tell you, if you
20 can recall, about the ownership of Raystay?

21 A. I don't recall, sir.

22 Q. You don't recall what he told you?

23 A. No, sir. Raystay didn't mean anything
24 to me.

25 Q. So he didn't tell you who the owners of

1 Raystay were?

2 A. I don't recall.

3 Q. Do you know today who the owners of
4 Raystay are?

5 A. I think it's -- I guess, his father.

6 Q. And from whom did you learn that?

7 A. I guess Mr. Holt, at some point in
8 time.

9 Q. When?

10 A. I don't know, sir.

11 MR. SHOOK: Just to clarify things at
12 this point, his father refers to David Gardner, who
13 isn't here anymore, and his father means George.

14 THE WITNESS: There were some
15 affidavits sent to me that I believe -- I don't
16 remember, George Gardner's name was in.

17 BY MR. COHEN:

18 Q. As of the time of this October, 1991
19 meeting you didn't know anything about Raystay?

20 A. No, sir, I did not.

21 Q. I see. When did you -- Continuing on
22 with paragraph six, when did you check with the
23 other two owners of Ready Mixed?

24 A. I would -- To the best of my
25 recollection, the 15th or 16th, the 15th -- At a

1 time after I got the first -- or somewhere around
2 there when I was asked the question, if anyone
3 could possibly have contacted the owners, I called
4 them up on the phone and asked them.

5 They weren't even aware of the TV
6 tower, so they were not contacted.

7 Q. To whom did you speak?

8 A. I spoke to Lee Ober and, I believe,
9 Donald Emmich.

10 Q. And that was in a phone conversation?

11 A. That's correct.

12 Q. And give me your best recollection of
13 the substance of that conversation or those
14 conversations. There were two conversations, I
15 take it; two individuals?

16 A. It could have been two separate calls,
17 or it could have been one. I don't recall. They
18 are both in the same office where they are located.

19 Q. You mean the three of you were on the
20 same --

21 A. No. I would have talked to the one.
22 Then I would have said: Patch me through to the
23 other one, then asked him.

24 Q. Give me your best recollection of the
25 substance of both conversations.

1 A. I'm sure it went something like: Has
2 anyone contacted you?

3 Q. When you say I'm sure, are you
4 reconstructing or recalling?

5 A. I am reconstructing.

6 Q. I really don't want you to reconstruct.

7 A. Well, I know you don't.

8 Q. If you can't recall, I'd much rather
9 you tell me you can't recall.

10 A. All right, I can't recall.

11 Q. Now, did the visitors, these unnamed
12 visitors at the October, 1991 visit, have an
13 opportunity to determine that in their view the
14 site was dusty?

15 A. Did they have the opportunity? Yes,
16 they had the opportunity. They didn't take it.

17 Q. How would they know -- How could they
18 tell you that it was dusty if they didn't take it?

19 A. They didn't tell me. I told them.
20 They wanted a dust-free area.

21 Q. But they didn't inspect the site at
22 all?

23 A. No, sir. They did not.

24 Q. So they had no way of knowing that the
25 site was dusty other than what you told them?

1 A. They had the opportunity to inspect the
2 site.

3 Q. Other than what you told them?

4 A. That's correct.

5 Q. So there I see. I didn't get that
6 subtle distinction.

7 So they never learned for themselves
8 that the site was dusty? You told them the site
9 was dusty?

10 A. I told them that I could not supply
11 them with a dust-free area.

12 Q. And they never inspected the site?

13 A. To my knowledge. I mean when they went
14 outside, whether they went and looked at it from
15 outside when they left, I don't know.

16 But as far as to go inside where they
17 wanted to put their equipment, they didn't go.
18 They had the opportunity -- They did not ask to go
19 in there.

20 Q. Were you with them the entire time they
21 were in your facility? I mean you, personally.

22 A. The entire time that they were in the
23 office, yes.

24 Q. In the premises?

25 A. No. Obviously not, sir, because they

1 would have driven in, parked their car, and came up
2 in the office, and then we held our discussion in
3 the office, and they went down the steps and left.

4 Q. So you don't know whether they wandered
5 around and had a visual inspection without your
6 presence?

7 A. They could not have gotten into the
8 plant.

9 Q. So, so they couldn't --

10 A. They would have had to come through the
11 office to get in.

12 Q. They couldn't have done it because they
13 had to go through your office to go into the plant?

14 A. Basically, yes, sir.

15 Q. So you're certain then they didn't have
16 an opportunity to visually inspect?

17 A. Visually outside looking at the plant
18 is the only way, as far as I know, they could get
19 in the plant.

20 Q. Where was the transmitter to be
21 located?

22 A. By transmitter, are you talking about
23 what I call the TV antenna?

24 Q. Call it the TV antenna.

25 A. They told me: On top of the structure.

1 Q. What was your understanding as to where
2 it was to be located when Daly talked to you?

3 A. When Daly talked to me, it was on top
4 of the structure at some point.

5 Q. Now, you're going to have to help me
6 because I have never seen your structure.

7 A. Okay.

8 Q. I have always wanted to, but I have
9 never got a chance. If you would invite me, I
10 would come.

11 A. There are a lot of them around
12 Washington, D.C., sir.

13 Q. But no one ever invites me anywhere.

14 A. Actually, sir, the one exhibit will
15 give you a good idea of what it looks like.

16 Q. My question is -- In my ponderous way
17 what I am trying to find out is the structure then
18 was supposed to be on the roof; is that it?

19 A. They wanted to put the antenna on top
20 of the roof.

21 Q. On top of the roof, okay. Now, from
22 the vantage point of where you met, could they see
23 the place where the antenna was to be located?

24 A. No, sir.

25 Q. Did you discuss with the visitors where

1 the transmitter was to be -- could be located? Did
2 you ever get that far?

3 A. No. Their discussion -- as far as
4 could be located, they came in, and there was the
5 TV antenna or transmitter that was to go on the top
6 of the plant.

7 And then we got into the discussion of
8 their equipment that had to be in a dust-free area.
9 And that's when everything came to a screeching
10 halt.

11 Q. So did you ever talk about the roof?

12 A. With those gentlemen, did I ever talk
13 about the roof?

14 Q. Yes.

15 A. I cannot recall, sir. No.

16 Q. In paragraph seven in line one, two,
17 three, four, five, six, you say: To the best of my
18 knowledge the visitors did not inspect the
19 facilities.

20 Okay, what do you mean to the best of
21 my knowledge, because that seems to qualify the
22 rest of the sentence?

23 A. You know, they did not go out into the
24 plant. They did not go up on the roof. And the
25 best of my knowledge, once they went outside, what

1 they did outside, I don't know.

2 Q. Could you inspect the facilities, Ready
3 Mixed facilities, from outside?

4 A. From outside on the ground you can
5 see -- Obviously, you can see the top of the
6 structure. But as far as making -- Well, you can
7 see it. That's about the best I can say.

8 Q. I guess it's clear from the last
9 sentence of paragraph seven that Mr. Holt never
10 told you that Raystay had turned in those
11 construction permits which would permit -- for
12 Lebanon and for Lancaster?

13 A. No, I had no knowledge that this had
14 gone -- had been turned in, to be carried any
15 further than what the visit was from these guys.

16 (Whereupon, there was a brief recess in
17 the proceedings.)

18 MR. COHEN: First, I would like to make
19 this a deposition exhibit.

20 Also, this document, let me first ask
21 you, my name, and I am not that vain. That's not
22 why I want this to be a deposition exhibit.

23 But can you tell me how it came about
24 that my name is on a yellow sticker which is
25 attached to we're going to call this -- I guess we

1 have to make a copy of this. We haven't made
2 copies of this, have we, Mr. Court Reporter?

3 I need a copy of this document. I want
4 to make this deposition exhibit six and make a copy
5 of this yellow sticker.

6 But let me just ask you, as this
7 document which we're going to identify as Rick
8 deposition exhibit six, which is a letter on the
9 letterhead of Mullin and Rhyne, which is two pages
10 addressed to you, Mr. Rick, and signed by
11 Christopher A. Holt, and it's dated May 14, 1993.

12 Attached is a yellow sticker with my
13 name, Glendale Broadcasting, and my phone number.

14 Tell me how is it that my name is in
15 such famous company as the law firm of Mullin,
16 Rhyne, which is an institution, of course?

17 THE WITNESS: Uh-huh. Merely, I copied
18 down your name and telephone number and stuck it
19 there.

20 MR. COHEN: It's nice to be in such
21 good company.

22 MR. EMMONS: You would be selected as a
23 partner.

24 MR. COHEN: I don't think I'm smart
25 enough.

1 (Whereupon, there was a brief recess in
2 the proceedings.)

3 (Whereupon, the Court Reporter marked
4 for identification as Deposition Exhibit Rick six,
5 a three-page document.)

6 BY MR. COHEN:

7 Q. This is deposition exhibit six. It's a
8 three-page document with: Lewis Cohen, Glendale
9 Broadcasting, 202 466-8565 on the first page.

10 On the second and third page is the
11 letter of Mullin, Rhyne to Mr. Rick, signed by
12 Christopher A. Holt. This will be Rick deposition
13 exhibit six.

14 I just have a few more questions. Then
15 I'll be out of your hair.

16 If you will let me ask you one more
17 time. I want to make sure I understand your
18 testimony.

19 Was there a time, Mr. Rick, as of the
20 time that Mr. Holt contacted you, did you believe
21 that the visit you received on October 16, 1991,
22 was by one person or by two persons?

23 A. It was by two. There was no question
24 it was by two people.

25 Q. You were always sure?

1 A. Oh, there was no question about that,
2 sir.

3 Q. There was never any doubt in your mind?

4 A. No, sir.

5 Q. You're aware, I guess, aren't you --
6 Strike that. You're aware, of course, since
7 you're, obviously, a very intelligent man, that
8 Rick deposition exhibit four --

9 Well, let me just ask you a question.
10 You spoke with Mr. Holt, and your conversation with
11 Mr. Holt resulted in the preparation of Rick
12 deposition exhibit four?

13 A. Uh-huh.

14 Q. Isn't that right?

15 A. Yes, sir.

16 Q. And you told him the facts, and he
17 jotted them down and put them in the form of your
18 affidavit?

19 A. Yes, sir.

20 Q. When you received as Rick -- the draft
21 of Rick -- You received the draft which is Rick
22 deposition exhibit four?

23 A. That's right.

24 Q. Now, am I correct that you never told
25 Mr. Holt that you received a visit by one person

1 since you were clear you had received a visit by
2 two persons?

3 A. I don't recall, sir.

4 Q. Oh, you might have told him one person?

5 A. No, I probably -- In my mind it was
6 always two people.

7 If I conveyed to him that it was one
8 person, it was incorrect at that point in time.

9 Q. You're aware that paragraph four of
10 Rick deposition exhibit number four, paragraph four
11 speaks about you received a visit from someone
12 whose name I do not recall?

13 A. I'm reading that now. Yes, sir.

14 Q. Is that the first time you ever noticed
15 that?

16 A. No, probably not, because it's changed
17 over in the next one, and if I went over it.

18 Q. How did it come about that Rick
19 deposition exhibit four speaks of one person?

20 A. The conversation that I had with Mr.
21 Holt, that's the way it might have been
22 interpreted. I don't know. I don't recall.

23 But when I read that, I knew. We
24 corrected it, that it was two people. It was
25 always two people in my mind.

1 Q. So Mr. Holt wrote it down wrong?

2 A. It's possible.

3 Q. Or it's possible you told him it was
4 one person?

5 A. I don't think I told him it was one
6 person. It was two people.

7 Q. And you will notice, of course, all
8 through paragraph four there is a reference of Rick
9 exhibit -- deposition exhibit number four, there is
10 reference to one person.

11 And the document will speak for itself
12 but -- which is a deposition exhibit to your
13 deposition, so it will go forward with your
14 deposition.

15 But there are several references in the
16 singular?

17 A. Uh-huh. That's correct.

18 Q. So Mr. Holt apparently got it wrong
19 several times?

20 A. Apparently.

21 Q. Five times he got it wrong. Then, of
22 course, paragraph seven of Rick deposition exhibit
23 four also speaks in terms of one person, and that
24 was changed in Rick deposition exhibit five, also;
25 is that right?

1 A. That's correct.

2 MR. COHEN: I have no further
3 questions.

4 EXAMINATION

5 BY MR. EMMONS

6 Q. I have some questions, Mr. Rick.

7 A. Certainly.

8 Q. How long have you been employed at
9 Ready Mixed?

10 A. Oh, gosh. Officially since 1970.
11 Before that, unofficially in summers.

12 Q. What is the address of Ready Mixed?

13 A. 36 Erick Road.

14 Q. That's E-R-I-C-K?

15 A. That's correct. Lancaster,
16 Pennsylvania.

17 Q. Does the company have any other
18 addresses?

19 A. No, sir. We have a plant in
20 Quarryville but it's just a plant.

21 Q. Does the company have any office other
22 than at the Erick Road address?

23 A. No, sir.

24 Q. I think you testified that you are a
25 stockholder of the company?